

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.: 2006-1472-PST-E    TCEQ ID: RN101908481    CASE NO.: 30968**  
**RESPONDENT NAME: 10104, INC. DBA NORTHSTAR FOOD STORE**

Page 1 of 2

<b>ORDER TYPE:</b>		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION

**SITE WHERE VIOLATION(S) OCCURRED:** 10104 Tidwell Road, Houston, Harris County

**TYPE OF OPERATION:** Convenience store with retail sales of gasoline

**SMALL BUSINESS:** ☒ Yes ☐ No

**OTHER SIGNIFICANT MATTERS:** There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.

**INTERESTED PARTIES:** No one other than the ED and the Respondent expressed an interest in this matter.

**COMMENTS RECEIVED:** The *Texas Register* comment period expired June 15, 2009. No comments were received.

**CONTACTS AND MAILING LIST:**

**TCEQ Attorney:** Ms. Dinniah M. Chahin, Litigation Division, MC 175, (512) 239-0617  
Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019

**TCEQ Enforcement Coordinator:** Mr. James Nolan, Air Enforcement Section, MC 149, (512) 239-6634

**TCEQ Regional Contact:** Ms. Nicole Bealle, Houston Regional Office, MC R-12, (713) 767-3623

**Respondent:** Mr. Fuad A. Bataineh, Director, 10104, Inc., 10104 Tidwell Road, Houston, Texas 77078

**Respondent's Attorney:** Mr. Charles Duke, Duke & Momberger, 9225 Katy Freeway, Suite 200, Houston, Texas 77024-1509

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></p> <p> <input type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review         </p> <p><b>Date of Complaint Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> August 2, 2006</p> <p><b>Date of NOE Relating to this Case:</b> August 9, 2006</p> <p><b>Background Facts:</b> The EDPRP was filed March 15, 2007. The Respondent filed an answer and the case was referred to SOAH. A settlement agreement was reached and a signed Agreed Order was received March 27, 2009.</p> <p><b>Current Compliance Status:</b> Not yet in compliance.</p> <p><b>PST:</b></p> <ol style="list-style-type: none"> <li>Failed to provide corrosion protection for the underground storage tank ("UST") system [30 TEX. ADMIN. CODE § 334.49(a) and TEX. WATER CODE § 26.3475(d)].</li> <li>Failed to have a release detection method capable of detecting a release from any portion of the UST system which contained regulated substances including the tanks, piping, and other ancillary equipment [30 TEX. ADMIN. CODE § 334.50(a)(1)(A) and TEX. WATER CODE § 26.3475(c)(1)].</li> <li>Failed to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as a motor fuel [30 TEX. ADMIN. CODE § 334.48(c)].</li> <li>Failed to make available legible copies of all required UST records for inspection upon request by agency personnel [30 TEX. ADMIN. CODE § 334.10(b)].</li> </ol>	<p><b>Total Assessed:</b> \$7,650</p> <p><b>Total Deferred:</b> \$ 0</p> <p> <input type="checkbox"/> Expedited Order  <input type="checkbox"/> Financial Inability to Pay  <input type="checkbox"/> SEP Conditional Offset         </p> <p><b>Total Paid/Due to General Revenue:</b> \$1,650/\$6,000</p> <p>The Respondent paid \$1,650 of the administrative penalty. The remaining amount of \$6,000 shall be payable in 6 monthly payments of \$1,000 each.</p> <p><b>Site Compliance History Classification</b>  <input checked="" type="checkbox"/> High    <input type="checkbox"/> Average    <input type="checkbox"/> Poor         </p> <p><b>Person Compliance History Classification</b>  <input checked="" type="checkbox"/> High    <input type="checkbox"/> Average    <input type="checkbox"/> Poor         </p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Ordering Provisions:</b></p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> <li>Immediately:             <ol style="list-style-type: none"> <li>Begin conducting proper inventory control procedures for all USTs; and</li> <li>Begin maintaining all records pertaining to the UST system.</li> </ol> </li> <li>Within 30 days:             <ol style="list-style-type: none"> <li>Install and implement a corrosion protection method for the USTs; and</li> <li>Install and implement a release detection method for all USTs at the Facility.</li> </ol> </li> <li>Within 45 days, submit written certification demonstrating compliance.</li> </ol>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision May 19, 2005

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	14-Aug-2006	<b>Screening</b>	25-Aug-2006	<b>EPA Due</b>	
	<b>PCW</b>	23-Jan-2007				

**RESPONDENT/FACILITY INFORMATION**

<b>Respondent</b>	10104, Inc. dba Northstar Food Store		
<b>Reg. Ent. Ref. No.</b>	RN101908481		
<b>Facility/Site Region</b>	12-Houston	<b>Major/Minor Source</b>	Minor Source

**CASE INFORMATION**

<b>Enf./Case ID No.</b>	30968	<b>No. of Violations</b>	4
<b>Docket No.</b>	2006-1472-PST-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Petroleum Storage Tank	<b>Enf. Coordinator</b>	Shontay Wilcher
<b>Multi-Media</b>		<b>EC's Team</b>	Enforcement Team 7
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** **Subtotal 1** \$8,500**ADJUSTMENTS (+/-) TO SUBTOTAL 1**

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

**Compliance History** -10% Enhancement **Subtotals 2, 3, & 7** -\$850**Notes** Reduction for High Performer Classification.**Culpability** No 0% Enhancement **Subtotal 4** \$0**Notes** The respondent does not meet the culpability criteria.**Good Faith Effort to Comply** 0% Reduction **Subtotal 5** \$0

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary	
Ordinary	
N/A	X (mark with a small x)

**Notes** The respondent does not meet the good faith criteria.**Economic Benefit** 0% Enhancement\* **Subtotal 6** \$0

<b>Total EB Amounts</b>	\$563
<b>Approx. Cost of Compliance</b>	\$12,100

\*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7** **Final Subtotal** \$7,650**OTHER FACTORS AS JUSTICE MAY REQUIRE** **Adjustment** \$0

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

**Notes****Final Penalty Amount** \$7,650**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty** \$7,650**DEFERRAL** 0% Reduction **Adjustment** \$0

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

**Notes** This is not an expedited case.**PAYABLE PENALTY** \$7,650

Screening Date 25-Aug-2006

Docket No. 2006-1472-PST-E

PCW

Respondent 10104, Inc. dba Northstar Food Store

Policy Revision 2 (September 2002)

Case ID No. 30968

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN101908481

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Shontay Wilcher

## Compliance History Worksheet

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)		0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Please Enter Yes or No

Adjustment Percentage (Subtotal 2) 0%

## &gt;&gt; Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

High Performer

Adjustment Percentage (Subtotal 7) -10%

## &gt;&gt; Compliance History Summary

Compliance History Notes

Reduction for High Performer Classification.

Total Adjustment Percentage (Subtotals 2, 3, &amp; 7) -10%

Screening Date 25-Aug-2006

Docket No. 2006-1472-PST-E

PCW

Respondent 10104, Inc. dba Northstar Food Store

Policy Revision 2 (September 2002)

Case ID No. 30968

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN101908481

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Shontay Wilcher

Violation Number 1

Primary Rule Cite(s) 30 Tex. Admin. Code § 334.49(a)

Secondary Rule Cite(s) Tex. Water Code § 26.3475(d)

Violation Description Failed to provide corrosion protection for the UST system.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				25%
Potential	x			

## &gt;&gt; Programmatic Matrix

Falsification				Percent
	Major	Moderate	Minor	

Matrix Notes Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment -\$7,500

Base Penalty Subtotal \$2,500

## Violation Events

Number of Violation Events 1

mark only one use a small x	daily	
	monthly	x
	quarterly	
	semiannual	
	annual	
	single event	

Violation Base Penalty \$2,500

One monthly event is recommended based on documentation of the violation during the August 2, 2006 investigation date to the August 25, 2006 screening date.

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$466

Violation Final Penalty Total \$2,250

This violation Final Assessed Penalty (adjusted for limits) \$2,250

## Economic Benefit Worksheet

Respondent: 10104, Inc. dba Northstar Food Store

Case ID No. 30968

Reg. Ent. Reference No. RN101908481

Media [Statute] Petroleum Storage Tank

Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost <small>No commas or \$</small>	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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### Delayed Costs

Equipment	\$10,000	02-Aug-2006	02-Apr-2007	0.7	\$22	\$444	\$466
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated costs to provide adequate corrosion control protection for the USTs. The Date Required is the investigation date and the Final Date is the estimated date of compliance.

### Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$10,000

**TOTAL** \$466

Screening Date 25-Aug-2006

Docket No. 2006-1472-PST-E

PCW

Respondent 10104, Inc. dba Northstar Food Store

Policy Revision 2 (September 2002)

Case ID No. 30968

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN101908481

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Shontay Wilcher

Violation Number 2

Primary Rule Cite(s) 30 Tex. Admin. Code § 334.50(a)(1)(A)

Secondary Rule Cite(s) Tex. Water Code § 26.3475(c)(1)

## Violation Description

Failed to have a release detection method capable of detecting a release from any portion of the UST system which contained regulated substances including the tanks, piping, and other ancillary equipment.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				25%
Potential	X			

## &gt;&gt; Programmatic Matrix

Falsification				Percent
	Major	Moderate	Minor	

Matrix Notes Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment -\$7,500

Base Penalty Subtotal \$2,500

## Violation Events

Number of Violation Events 1

mark only one use a small x	daily	
	monthly	X
	quarterly	
	semiannual	
	annual	
	single event	

Violation Base Penalty \$2,500

One monthly event is recommended based on documentation of the violation during the August 2, 2006 investigation date to the August 25, 2006 screening date.

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$70

Violation Final Penalty Total \$2,250

This violation Final Assessed Penalty (adjusted for limits) \$2,250

# Economic Benefit Worksheet

Respondent 10104, Inc. dba Northstar Food Store  
Case ID No. 30968  
Reg. Ent. Reference No. RN101908481  
Media [Statute] Petroleum Storage Tank  
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost No commas or \$	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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## Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)	\$1,500	02-Aug-2006	02-Apr-2007	0.7	\$3	\$67	\$70
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to provide release detection for the USTs at the Facility. Date Required is the date of the investigation and Final Date is the estimated date of compliance.

## Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance **\$1,500**

**TOTAL \$70**



Screening Date 25-Aug-2006

Docket No. 2006-1472-PST-E

PCW

Respondent 10104, Inc. dba Northstar Food Store

Policy Revision 2 (September 2002)

Case ID No. 30968

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN101908481

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Shontay Wilcher

Violation Number 3

Primary Rule Cite(s) 30 Tex. Admin. Code § 334.48(c)

Secondary Rule Cite(s)

Violation Description Failed to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as a motor fuel.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				25%
Potential	X			

## &gt;&gt; Programmatic Matrix

Matrix Notes	Falsification	Major	Moderate	Minor	Percent
Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.					

Adjustment -\$7,500

Base Penalty Subtotal \$2,500

## Violation Events

Number of Violation Events 1

mark only one use a small x	daily	
	monthly	X
	quarterly	
	semiannual	
	annual	
	single event	

Violation Base Penalty \$2,500

One monthly event is recommended based on documentation of the violation during the August 2, 2006 investigation date to the August 25, 2006 screening date.

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$23

Violation Final Penalty Total \$2,250

This violation Final Assessed Penalty (adjusted for limits) \$2,250

## Economic Benefit Worksheet

Respondent 10104, Inc. dba Northstar Food Store  
 Case ID No. 30968  
 Reg. Ent. Reference No. RN101908481  
 Media [Statute] Petroleum Storage Tank  
 Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Description	No commas or \$						

<b>Delayed Costs</b>							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)	\$500	02-Aug-2006	02-Apr-2007	0.7	\$1	\$22	\$23
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs: Estimated cost to conduct effective inventory control. Date Required is the date of the investigation and Final Date is the estimated date of compliance.

<b>Avoided Costs</b>							
ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)							
Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance **\$500**

**TOTAL** **\$23**

Screening Date 25-Aug-2006

Docket No. 2006-1472-PST-E

PCW

Respondent 10104, Inc. dba Northstar Food Store

Policy Revision 2 (September 2002)

Case ID No. 30968

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN101908481

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Shontay Wilcher

Violation Number 4

Primary Rule Cite(s) 30 Tex. Admin. Code § 334.10(b)

Secondary Rule Cite(s)

Violation Description

Failed to make available legible copies of all required UST records for inspection upon request by agency personnel.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				
Potential				

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
	X			10%
Matrix Notes 100% of the rule requirement was not met.				

Adjustment -\$9,000

Base Penalty Subtotal \$1,000

## Violation Events

Number of Violation Events 1

mark only one use a small x	daily	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	X

Violation Base Penalty \$1,000

One single event is recommended based on documentation of the violation during the August 2, 2006 investigation date.

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$3

Violation Final Penalty Total \$900

This violation Final Assessed Penalty (adjusted for limits) \$900

## Economic Benefit Worksheet

Respondent 10104, Inc. dba Northstar Food Store  
 Case ID No. 30968  
 Reg. Ent. Reference No. RN101908481  
 Media [Statute] Petroleum Storage Tank  
 Violation No. 4

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost No commas or \$	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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<b>Delayed Costs</b>							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System	\$100	02-Aug-2006	02-Apr-2007	0.7	\$3	n/a	\$3
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs: Estimated cost to maintain the required records. The Date Required is the date of the investigation and the Final Date is the estimated date of compliance.

<b>Avoided Costs</b>							
ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)							
Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance **\$100**

**TOTAL** **\$3**

## Compliance History

Customer/Respondent/Owner-Operator:	CN602939969      10104, Inc.	Classification: HIGH	Rating: 0.0
Regulated Entity:	RN101908481      NORTHSTAR FOOD STORE	Classification: HIGH	Site Rating: 0.0
<hr/>			
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	49412
Location:	10104 TIDWELL RD, HOUSTON, TX, 77078		Rating Date: September 01 06 Repeat Violator: NO
TCEQ Region:	REGION 12 - HOUSTON		
Date Compliance History Prepared:	September 05, 2006		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	September 05, 2001 to September 05, 2006		
<hr/>			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History			
Name:	Shontay Wilcher	Phone:	(512) 239-2136

### Site Compliance History Components

- |  |                 |
|--|-----------------|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes             |
| 2. Has there been a (known) change in ownership of the site during the compliance period?    | Yes             |
| 3. If Yes, who is the current owner?   | 10104, Inc.     |
| 4. If Yes, who was/were the prior owner(s)?  | Northstar, Inc. |
| 5. When did the change(s) in ownership occur?  | 11/03/2005      |

### Components (Multimedia) for the Site :

- |                        |   |
|------------------------|---|
| A.                     | Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government. |
|                        | N/A   |
| B.                     | Any criminal convictions of the state of Texas and the federal government.  |
|                        | N/A   |
| C.                     | Chronic excessive emissions events.   |
|                        | N/A   |
| D.                     | The approval dates of investigations. (CCEDS Inv. Track. No.)   |
|                        | 1 08/09/2006 (490149)   |
|                        | 2 09/27/2002 (11972)  |
|                        | 3 03/10/2004 (263207)   |
| E.                     | Written notices of violations (NOV). (CCEDS Inv. Track. No.)  |
|                        | N/A   |
| F.                     | Environmental audits.   |
|                        | N/A   |
| G.                     | Type of environmental management systems (EMSs).  |
|                        | N/A   |
| H.                     | Voluntary on-site compliance assessment dates.  |
|                        | N/A   |
| I.                     | Participation in a voluntary pollution reduction program.   |
|                        | N/A   |
| J.                     | Early compliance.   |
|                        | N/A   |
| Sites Outside of Texas |   |
|                        | N/A   |

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
10104, INC. DBA NORTHSTAR  
FOOD STORE,  
RN101908481**

§  
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§  
§  
§

**BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2006-1472-PST-E**

### **I. JURISDICTION AND STIPULATIONS**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding 10104, Inc. dba Northstar Food Store ("10104, Inc.") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and 10104, Inc. represented by Charles Duke of the law firm of Duke & Momberger, appear before the Commission and together stipulate that:

1. 10104, Inc. owns and operates a convenience store with retail sales of gasoline located at 10104 Tidwell Road, Houston, Harris County, Texas (the "Facility").
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 26 and TCEQ rules.
3. The Commission and 10104, Inc. agree that the Commission has jurisdiction to enter this Agreed Order, and that 10104, Inc. is subject to the Commission's jurisdiction.
4. 10104, Inc. received notice of the violations alleged in Section II ("Allegations") on or about August 14, 2006.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by 10104, Inc. of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of seven thousand six hundred fifty dollars (\$7,650.00) is assessed by the Commission in settlement of the violations alleged in Section

II ("Allegations"). 10104, Inc. paid one thousand six hundred fifty dollars (\$1,650.00) of the administrative penalty. The remaining amount of six thousand dollars (\$6,000.00) of the administrative penalty shall be payable in six monthly payments of one thousand dollars (\$1,000.00) each, pursuant to 30 TEX. ADMIN. CODE § 70.9(a). The first monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall be paid not later than 30 days following the due date of the previous payment.

If 10104, Inc. fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, 10104, Inc.'s failure to meet the payment schedule of this Agreed Order constitutes the failure by 10104, Inc. to timely and satisfactorily comply with all of the terms of this Agreed Order.

7. Any notice and procedures which might otherwise be authorized or required in this action are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and 10104, Inc. agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that 10104, Inc. has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## II. ALLEGATIONS

1. During an investigation conducted on August 2, 2006, a TCEQ Houston Regional Office investigator documented that 10104, Inc. violated:
  - a. 30 TEX. ADMIN. CODE § 334.49(a) and TEX. WATER CODE § 26.3475(d) by failing to provide corrosion protection for the underground storage tank ("UST") system.

- b. 30 TEX. ADMIN. CODE § 334.50(a)(1)(A) and TEX. WATER CODE § 26.3475(c)(1) by failing to have a release detection method capable of detecting a release from any portion of the UST system which contained regulated substances including the tanks, piping, and other ancillary equipment.
- c. 30 TEX. ADMIN. CODE § 334.48(c) by failing to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as a motor fuel.
- d. 30 TEX. ADMIN. CODE § 334.10(b) by failing to make available legible copies of all required UST records for inspection upon request by agency personnel.

### III. DENIALS

10104, Inc. generally denies each allegation in Section II ("Allegations").

### IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that 10104, Inc. pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and 10104, Inc.'s compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from considering or requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: 10104, Inc. dba Northstar Food Store, Docket No. 2006-1472-PST-E" to:

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. 10104, Inc. shall undertake the following technical requirements:
  - a. Immediately upon the effective date of this Agreed Order, 10104, Inc. shall:
    - i. Begin conducting proper inventory control procedures for all USTs, in accordance with 30 TEX. ADMIN. CODE § 334.48; and



- ii. Begin maintaining all records pertaining to the UST system, in accordance with 30 TEX. ADMIN. CODE § 334.10.
- b. Within 30 days after the effective date of this Agreed Order, 10104, Inc. shall:
  - i. Install and implement a corrosion protection method for the USTs in accordance with 30 TEX. ADMIN. CODE § 334.49; and
  - ii. Install and implement a release detection method for all USTs at the Facility, in accordance with 30 TEX. ADMIN. CODE § 334.50.
- c. Within 45 days after the effective date of this Order, 10104, Inc. shall submit written certification, and detailed supporting documentation including photographs, receipts, and other records to demonstrate compliance with Ordering Provision Nos. 2.a. through 2.b.ii. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

10104, Inc. shall submit the written certification and copies of documentation necessary to demonstrate compliance with Ordering Provision Nos. 2.a. through 2.b.ii. to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

and

Nicole Bealle, Waste Section Manager  
Texas Commission on Environmental Quality  
Houston Regional Office  
5425 Polk Street, Suite H  
Houston, Texas 77023-1452

3. The provisions of this Agreed Order shall apply to and be binding upon 10104, Inc. 10104, Inc. is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If 10104, Inc. fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, 10104, Inc.'s failure to comply is not a violation of this Agreed Order. 10104, Inc. shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. 10104, Inc. shall notify the Executive Director within seven days after 10104, Inc. becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by 10104, Inc. shall be made in writing to the Executive Director. Extensions are not effective until 10104, Inc. receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against 10104, Inc. in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
8. Under 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of the Order to 10104, Inc., or three days after the date on which the Commission mails notice of the Order to 10104, Inc., whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

03/27/2009 10:00 FAX 5122387434

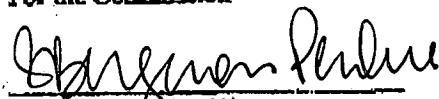
TCEQ Legal Services

03/27/09

10104, Inc. dba Northstar Food Store  
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Page 6

**SIGNATURE PAGE****TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

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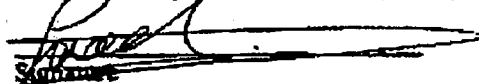
For the Commission5/13/2009DateFor the Executive Director

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on 10104, Inc.'s compliance history;
- Greater scrutiny of any permit applications submitted by 10104, Inc.;
- Referral of this case to the Attorney General's office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions against 10104, Inc.;
- Automatic referral to the Attorney General's Office of any future enforcement actions against 10104, Inc.; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

3/27/2009DateFuad ALBatainehName (Printed or typed)Authorized representative of10104, Inc. dba Northstar Food StoreDirectorTitle